

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

American Hospital Service	:	
Group, INC	:	
300 N. Pottstown Pike	:	
Suite 250	:	
Exton, PA 19341	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
vs.	:	
	:	
ST. PAUL FIRE & MARINE INSURANCE	:	
COMPANY	:	
385 Washington Street	:	NO: 02-CV-4014
St. Paul, MN 55102-1396	:	
	:	
Defendant.	:	

ORDER

AND NOW, this _____ day of _____, 2002, upon consideration of plaintiff's Motion for Remand, and any response thereto, IT IS HEREBY ORDERED that this case is remanded to the Court of Common Pleas, Chester County, Pennsylvania.

BY THE COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

American Hospital Service	:
Group, INC	:
300 N. Pottstown Pike	:

Suite 250
Exton, PA 19341

Plaintiff,

vs.

ST. PAUL FIRE & MARINE INSURANCE
COMPANY

385 Washington Street
St. Paul, MN 55102-1396

Defendant.

CIVIL ACTION

NO: 02-CV-4014

MOTION TO REMAND

Plaintiff, American Hospital Service Group, Inc., through its attorneys, Johnston & Associates, P.C., hereby moves this Court to Remand this action to State Court pursuant to 28 U.S.C. §1447. In support of this motion, American Hospital Service Group, Inc. relies upon the accompanying Memorandum of Law.

JOHNSTON & ASSOCIATES, P.C.

BY: _____

MARK E. JOHNSTON, ESQUIRE
ID NO. 61248
ATTORNEY FOR PLAINTIFF
518 Kimberton Road, #301
Phoenixville, PA 19460
(610)608-5524

Date: July 8, 2002

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

American Hospital Service
Group, INC
300 N. Pottstown Pike
Suite 250
Exton, PA 19341

Plaintiff,

vs.

CIVIL ACTION

ST. PAUL FIRE & MARINE INSURANCE :
COMPANY :
385 Washington Street : NO: 02-CV-4014
St. Paul, MN 55102-1396 :
 :
 :
Defendant. :

**PLAINTIFF'S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION TO REMAND**

Plaintiff, American Hospital Service Group, Inc., hereby files this memorandum of law in support of its motion to remand this action to state court.

BACKGROUND

Plaintiff as listed on the complaint is a corporation, with a primary business location of 300 N. Pottstown Pike, Exton, Pennsylvania. Defendant is a Minnesota corporation with a business address 385 Washington Street, St. Paul, Minnesota. A Writ of Summons was filed on March 22, 2002 with a mandatory Chester County Court cover sheet stating that this case is a Chester County Court arbitration case being under \$50,000.00. Service was effectuated on March 25, 2002. The complaint was sent to defendant's counsel on May 22, 2002, as a result of a Praecipe to File a Complaint filed by defendant. Then on June 21, 2002, plaintiff received a Notice of Removal. A Response to the Notice of Removal was sent by plaintiff on July 3, 2002 and time stamped on July 5, 2002. On July 8, 2002, plaintiff received defendant's Motion to Dismiss. Therefore, one part of possible diversity may be claimed. The complaint states all damages in the complaint are under \$50,000.00.

II. ARGUMENT

Defendant's Notice of Removal invokes this Court's

diversity jurisdiction. Pursuant to 28 U.S.C. §1332, diversity jurisdiction, a district court has jurisdiction over a civil action if the parties are citizens of different states and the amount in controversy exceeds \$75,000. If either of these requirements are not met, the court must remand a removed case to the state court for lack of subject matter jurisdiction pursuant to 28 U.S.C. §1447. The amount in controversy in this case is not in excess of \$75,000.00, and, therefore, must be remanded back to state court (See, Exhibit "A" Response to Notice of Removal). In determining the amount in controversy, the court must look at the complaint itself. See Angus v. Shiley, Inc., 989 F.2d 142, 145 (3d Cir. 1993). The court makes this determination by examining the jurisdiction amount in effect on the date of removal. TJS Brokerage & Co. v. CRST, Inc., 958 F. Supp 220, 221 (E.D. Pa. 1997).

This court recently concluded that the defendant must prove the amount in controversy by a preponderance of the evidence. Feldman v. New York Life Insurance Co., No. CIV.A. 97-4684, 1998 WL 94800, at *2 (E.D. Pa. Mar. 4, 1998). If the Court concludes by a preponderance of the evidence that the claim is really for less than the jurisdictional amount, the case must be remanded to the state court. St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 289 (1939); Suber v. Chrysler Corp., 104 F. 3d 578, 583 (3d Cir. 1997). In the instant case, defendant does not show by a preponderance of the evidence that the amount in controversy is in excess of \$75,000.00. The fact of the matter is that the amount in controversy is not in excess of \$75,000.00. Therefore, this court must remand this case back to

III CONCLUSION

Defendant does not show with any legal certainty or any possibility that the \$75,000.00 statutory amount in controversy would be met, and, therefore proper jurisdiction was filed and should be in the Court of Common Pleas, Chester County, Pennsylvania. Therefore, this Court does not have proper jurisdiction in this action.

Respectfully submitted,
JOHNSTON & ASSOCIATES, P.C.

BY: _____
MARK E. JOHNSTON, ESQUIRE

Date: July 8, 2002

CERTIFICATE OF SERVICE

I, Mark E. Johnston, hereby certify that a true and correct copy of the herein pleading was served on all opposing counsel by United States mail, first class, postage pre-paid this day listed below:

Francis T. McDevitt, Esquire
Naulty, Scaricamazza & McDevitt, LTD.
Suite 1600
1617 JFK BLVD.
Philadelphia, PA 1919103

JOHNSTON & ASSOCIATES, P.C.

BY: Mark E. Johnston

Date: _____

JOHNSTON & ASSOCIATES, P.C.

Attorneys at Law

518 Kimberton Road, #301
Phoenixville, Pennsylvania 19460
(610)608-5524
Fax (610)935-0662

Mark E. Johnston *

* Also licensed in
New Jersey

July 8, 2002

Francis T. McDevitt, Esquire
Naulty, Scaricamazza & McDevitt, LTD.
Suite 1600
1617 JFK BLVD.
Philadelphia, PA 19103

**RE: American Hospital Service Group Inc. V. St. Paul
Insurance Fire & Marine Insurance Company
USDC # 02-CV-4014**

Dear Mr. McDevitt:

Enclosed please find a copy of a Motion to Remand of
which the original was filed with the court.

Very truly yours,

JOHNSTON & ASSOCIATES, P.C.

BY:

MARK E. JOHNSTON, ESQUIRE

MEJ:bms
Enclosures
cc American Hospital Service Group, Inc.
File

LAW OFFICES
JOHNSTON & ASSOCIATES, P.C.

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MARK E. JOHNSTON*

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July 8, 2002

Clerk of Courts
Eastern District of Pennsylvania
United States Court House
601 Market Street, Room 2609
Philadelphia, PA 19106

Re: American Hospital Service Group v. St. Paul
USDC No: 02-CV-4014

Dear Clerk:

Enclosed please find the following for filing:

1. The original and one copy of a Motion to Remand. Please file the original and return a time stamped copy to me in the self addressed, stamped envelope.

If there are any questions or concerns please feel free to give me a call.

Thank you.

Sincerely,

Mark E. Johnston, Esquire
JOHNSTON & ASSOCIATES, P.C.
518 Kimberton Road, #301
Phoenixville, PA 19460

MEJ/jre
cc AHSB

